

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY

MAURICE MINTER,

Petitioner

v.

Case No. 5:13-cv-24164

**JOEL ZIEGLER, Warden,
FCI Beckley,**

Respondent.

PROPOSED FINDINGS AND RECOMMENDATION

On October 1, 2013, the petitioner, Maurice Minter, Reg. No. 11113-088, who is presently incarcerated at the Federal Correctional Institution at Beckley, West Virginia, filed a "Motion to Correct Sentence" (ECF No. 1), seeking to receive sentence credit for time spent in official detention prior to his sentencing. The court construed the motion as a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

On October 22, 2013, the Clerk mailed a "Notice of Failure to Remit Filing Fee" to the petitioner, advising the petitioner that he must either pay the applicable \$5.00 filing fee or file an Application to Proceed Without Prepayment of Fees and Costs within 10 days. (ECF No. 4.) The Clerk enclosed an Application to Proceed Without Prepayment of Fees and Costs and an Authorization to Release Institutional Account Information for Petitioner with instructions to to complete the forms and return them for filing within 10 days.

Having received nothing further from the petitioner, on November 20, 2013, the undersigned entered an "Order and Notice" directing the petitioner to pay the \$5.00

filing fee or to file an Application to Proceed Without Prepayment of Fees and Costs by December 4, 2013, and advising the petitioner that the failure to comply with the undersigned's Order would result in a recommendation to the presiding District Judge that this matter be dismissed for failure to prosecute. (ECF No. 5.)

As of today's date, the petitioner has not paid the filing fee or filed the appropriate forms to proceed without prepayment of fees and costs, and he has taken no other action with regard to this matter.

The undersigned proposes that the presiding District Judge **FIND** that the petitioner has wholly failed to prosecute this civil action. It is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter, without prejudice, for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

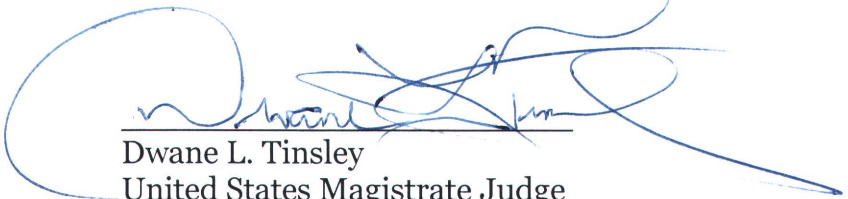
The petitioner is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(C), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the petitioner shall have fourteen days (filing of objections) and then three days (service/mailling), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of

Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Faber.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the petitioner.

December 31, 2013



Dwane L. Tinsley
United States Magistrate Judge